



August 3, 2011

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: Special Access for Price Cap Local Exchange Carriers, AT&T Corp.  
Petition for Rulemaking to Reform Regulation of Incumbent Local  
Exchange Carrier Rates for Interstate Special Access Services, WC  
Docket No. 05-25, RM-10593

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Dear Ms Dortch:

AT&T has objected to the acknowledgements of confidentiality filed by Ms. Susan Gately, economic consultant to the Ad Hoc Telecommunications Users Committee ("Ad Hoc"), pursuant to protective orders adopted by the Commission in the special access rulemaking, captioned above.<sup>1</sup> For the reasons discussed below, Ad Hoc respectfully requests that the Commission deny AT&T's objection to Ms. Gately's acknowledgments.

Ms. Gately has been an economic and policy consultant for nearly thirty years. For nearly all of that time, she has been an economic consultant to the Ad Hoc Telecommunications Users Committee ("Ad Hoc"). She has participated in hundreds of Commission proceedings concerning access charges, universal service, separations and cost accounting, incentive regulation, regulatory forbearance, and mergers. She has been Ad Hoc's economic consultant in the special access rulemaking since its inception.

AT&T bases its objection on Ms. Gately's profile posted on the professional networking site "LinkedIn." AT&T claims that Ms. Gately "appears" to be involved in competitive decision-making within the meaning of the protective orders issued by the Commission because her profile "suggests" as much. AT&T also asserts that compliance with the Commission's protective order presumes that Ms. Gately will be able to forget what she learns or "split her brain in two" when advising clients in the future, an expectation AT&T considers unreasonable. Therefore, AT&T argues that Ms. Gately should have no access to its "competitively-sensitive information."

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<sup>1</sup> Letter from Brendan J. McMurrer, Sidley Austin LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593 (July 14, 2011).



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AT&T's objection is invalid for three reasons.

First, AT&T's objection misrepresents the LinkedIn profile on which it is based. AT&T claims that Ms. Gately's LinkedIn profile states that "she 'provid[es] strategic advi[ce]' " on pricing and rate structure. In fact, the profile (which is attached to AT&T's objection as Exhibit A) states only that she has "specific experience" in the areas of pricing and rate structure. AT&T claims the profile states that, at the time Ms. Gately executed her Acknowledgements, she was ETI's primary contact point and coordinator for major corporate user clients to whom she provided advice regarding strategic planning, procurement negotiation, and pricing and policy trends. In fact, the profile states that Ms. Gately provided those services when she was Senior Vice President at Economics and Technology, Inc. and that she had left that position at the time she executed the Acknowledgements cited by AT&T.

Second, AT&T's solicitude for the health of Ms. Gately's brain notwithstanding, its concern regarding Ms. Gately's ability to comply with the protective orders is misplaced. AT&T claims that it is unreasonable to expect persons who review AT&T's competitively-sensitive information to forget what they learn or to "split their brain in two" in order to preserve the confidentiality of AT&T's filing. But that is not an extraordinary or impossible demand for reviewing parties to meet nor is it even unusual. Maintaining confidentiality and compartmentalizing information is a common and routine requirement not only in regulatory and judicial proceedings but in a wide (and increasing) variety of commercial settings in which parties enter into non-disclosure agreements. Indeed, the protective orders themselves require "split brains" of every person who reviews AT&T's data because, by their terms, the orders prohibit reviewing parties from using the confidential information in future proceedings that raise the same or similar issues.<sup>2</sup>

Finally, AT&T's objection is based on a misstatement of the requirements of the Second Protective Order. AT&T quotes the language in the Second Protective Order defining "competitive decision-making" but omits the language applicable to consultants employed by a non-commercial party like Ad Hoc. As

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<sup>2</sup> For example, the Second Protective Order, *Special Access for Price Cap Local Exchange Carriers*, Second Protective Order, WC Docket No. 05-25, RM-10593, DA 10-2419 (rel. Dec. 27, 2010) ("Second Protective Order"), states that persons obtaining access to confidential information "shall use the information solely for the preparation and conduct of this rulemaking proceeding before the Commission ...and, except as provided herein, shall not use such documents or information for any other purpose, including...other administrative, regulatory or judicial proceedings." Second Protective Order at para. 7.



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to those consultants, the Second Protective Order requires that they may not be “involved in the competitive decision-making activities of *any competitor of a Submitting Party*.”<sup>3</sup> Ms. Gately is not now and never has been engaged in competitive decision-making for AT&T competitors. If the Commission would like an additional affirmation to that effect, beyond the acknowledgements, agreements, and representations in Ms. Gately’s executed Acknowledgement of Confidentiality, Ms. Gately would be happy to provide it.

Sincerely,

A handwritten signature in black ink that reads 'Colleen Boothby'. The signature is written in a cursive, flowing style.

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Colleen Boothby

Counsel to

Ad Hoc Telecommunications Users Committee

cc (email): Betsy McIntyre  
Andrew Mulitz  
Jenny Prime  
Deena Shetler

Brendan J. McMurrer



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